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II: Remarks

In order to afford the Examiner an informed opportunity to reconsider her requirement for election among species attributed to embodiments described in a number of figures, the relationship of the form of the invention represented by such figures is further described below.

Figures 2A and 2B are set out by the Examiner as Specie II and III respectively. Inasmuch as figure 2B is a detail of figure 2A (see par.26), the identification as separate species is erroneous and cannot be so held given the direction of MPEP 808.01(a):

“Election of species should not be required if the species claimed are considered clearly unpatentable (obvious) over each other.”

Since figure 1 is offered to place the invention in its context, the identification of this figure as a specie does not offer an illustration in adequate detail for certain aspects of the invention. The figure serves to give the reader an understanding of related components and stands as a “schematic diagram” of the entire apparatus. An aid to the reader’s clear understanding of the context of the invention ought not be treated as a specie.

Another ambiguous distinction is found in figures 5A,B together with either of figures 5C or 5D. The Examiner has recognized that figure 5B is a transverse cross section of figure 5A, but figures 5C and 5D represent alternate transverse cross sections. While it might be considered that 5C and 5D are physically distinct, that is not the well considered choice that is offered by the Examiner’s overdrawn restriction requirement.

Therefore, Specie X cannot be distinct from Specie XI or from Specie XII although a specie might be identified with the figures 5A,B,C or separately figures 5A,B,D.

Applicants suggest that restriction as to species be withdrawn and that prosecution on the merits continue in respect to the claims. Such a course is consistent with the spirit and

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VARIAN, INC.

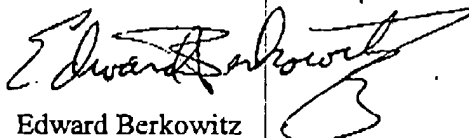
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the letter of the Rules where the distinction of species cannot be maintained as set forth in the Examiner's requirement for election.

Respectfully submitted,



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